

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CRAIG THOMAS,

Plaintiff,

**DECLARATION IN  
OPPOSITION**

-against-

Docket No: 16 CV 6105

YRC INC., ITS AGENTS, SERVANTS, AND/OR  
EMPLOYEES, AND LANCE D. MORGAN,

Defendants.

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BRIAN P. CALLAHAN, an attorney duly admitted to practice law in the Courts of the State of New York and the United States District Court for the Southern District of New York, states and alleges the following under the penalties of perjury: hereby affirms the truth of the following under the penalties of perjury:

1. I am an attorney in the law firm of DeSena & Sweeney, LLP, attorneys for YRC INC., and Lance D. Morgan.
2. I respectfully submit this declaration in opposition to plaintiff Craig Thomas' motion for an order, pursuant to Federal Rules of Evidence Rule 702 through Rule 705 and Daubert v. Merrell Dow Pharmaceuticals , 509 U.S. 579 [1993], precluding the testimony of Dr. Kevin Toosi, a Biomechanical Engineer.
3. The following documents are annexed hereto:

**Exhibit "A"** MV-104AN prepared and filed by NYC police officers regarding the subject motor vehicle accident.

**Exhibit "C"** The curriculum vitae of Dr. Kevin K Toosi.

**Exhibit "D-1"** Biomechanical Analysis Report prepared by Dr. Kevin K. Toosi, pages 1 - 13.

**Exhibit "D-2"** Biomechanical Analysis Report prepared by Dr. Kevin K. Toosi, pages 14 - 20.

**Exhibit "D-3"** Biomechanical Analysis Report prepared by Dr. Kevin K. Toosi, pages 21 - 26.

**Exhibit "E"** Copy of the Myers v. Culler, Index # 04578-2014 decision issued by Justice Peter Sweeney- Supreme Court Kings County.

**Exhibit "F"** Copy of Gonzalez v. Palen, 2015 N.Y. Misc. LEXIS 255 [App. Term 1<sup>st</sup> Dept. 2015], 2015 NY Slip Op 51101(U).

**Exhibit "G"** Copy of the LEXIS-NEXIS search regarding Penhasov v. Khaliki Index # 509207-2014 Supreme Court Kings County.

**Exhibit "H"** Defendant Lance D. Morgan deposition transcript, pages 1-4 and 26-28.

4. It is respectfully submitted the Court should deny plaintiff Craig Thomas' FRE Rule 702 through Rule 705 motion, in its entirety and grant such other and further relief as this Court deems just and proper.

Dated: Bohemia, New York  
September 14, 2017



Brian P. Callahan, Esq.

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Docket 16-cv-06105 (AT)

Year 2016

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UNITED STATES DISTRICT COURT  
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CRAIG THOMAS,

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-against-

YRC INC., its agents, servants, and/or employees, and LANCE D. MORGAN,

Defendants.

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**DECLARATION IN OPPOSITION AND MEMORANUM OF LAW**

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DESENA & SWEENEY, LLP  
Attorneys at Law  
*Attorneys for* YRC INC. D/B/A YRC FREIGHT  
AND LANCE D. MORGAN  
1500 Lakeland Avenue  
Bohemia, NY 11716  
(631) 360-7333

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**ATTORNEY CERTIFICATION**

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions contained in the above referenced documents are not frivolous.

Dated: Bohemia, New York  
September 14, 2017



BRIAN P. CALLHAN, ESQ.

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Sir: Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
within named Court on

, 20 .

duly entered in the office of the clerk of the

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the Honorable  
, one of the judges of the within named court at on , 20 at M.

To:

Uriel E. Gribetz  
Attorney(s) for Plaintiff(s)  
19 Court Street, Suite 201  
White Plains, NY 10601  
(914) 949-0100

Yours etc.,

DESENA & SWEENEY, LLP  
*Attorneys for*  
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